In the Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-402

TROY HONEYCUTT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on two counts of making material false declarations before a grand jury, in violation of 18 U.S.C. 1623. He was sentenced to concurrent terms of four months' imprisonment, to be followed by two years' probation. The court of appeals affirmed (Pet. App. A). Petitioner contends that his conviction must be reversed because the declarations were literally true.

The grand jury was investigating extortion allegedly perpetrated by Chicago police officers against local tavern owners. Petitioner, a tavern owner, denied at two separate sessions of the grand jury that he had been asked by officers to pay money to them, or that he had paid or made payments to them. The evidence, as the court of appeals noted (Pet. App. 2), clearly established that petitioner had

turned money over to various policemen in response to solicitation amounting to extortion. Petitioner's defense was that he believed his answers before the grand jury to be true. He contended that, since the officers were armed, he had not "paid" them, but simply had surrendered money in the course of what he considered to be an armed robbery.

The jury was instructed that it could convict petitioner only after concluding that petitioner understood the sense in which the word "pay" had been used in the questions directed to him, and that petitioner knowingly had given false responses (see Pet. App. 5-6). The jury concluded that petitioner had understood the sense in which "pay" and "paid" had been used in the questions. Petitioner's contrary assertions (Pet. 3-6) seek a redetermination by this Court of a factual issue resolved adversely to him by the jury.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1975.

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[1]This is not a case like *Bronston* v. *United States*, 409 U.S. 352, in which the witness' answer, although intended to mislead, was nonresponsive and literally true. The answers in this case were responsive and clearly false, so long as petitioner understood the everyday sense in which the terms in the questions had been used—and the jury determined that he had so understood them.

There is no merit to petitioner's apparent argument that, as a matter of *law*, the word "pay" cannot be used to describe the tender of money to an extorter. This argument seems to rest upon the assertion that extortion by police officers is "armed robbery" if the officers are armed at the time of the extortion. But although the extorting officers were armed, petitioner paid as demanded because of fear created by the officers' implied threat to take official action against him, and not because he feared that they would use their weapons. And even if the extortion were "armed robbery" as a matter of law, that could not affect the ordinary language meaning of the words used in the questions put to petitioner.